

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William MacLure	Team: Squad #11	CCRB Case #: 201902884	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 04/01/2019 11:00 PM	Location of Incident: Sutter Avenue and Logan Street	Precinct: 75	18 Mo. SOL 10/1/2020	EO SOL 5/18/2021	
Date/Time CV Reported Wed, 04/03/2019 1:55 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 04/03/2019 1:55 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Sean Collins	29210	954654	075 PCT
2. POM Francesco Iorio	05463	956763	075 PCT
3. POM Vincent Gambino	31824	954841	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Francesco Iorio	Abuse: Police Officer Francesco Iorio frisked § 87(2)(b)	
B.POM Vincent Gambino	Abuse: Police Officer Vincent Gambino frisked § 87(2)(b)	
C.POM Vincent Gambino	Abuse: Police Officer Vincent Gambino searched the vehicle in which § 87(2)(b) was an occupant.	
D.POM Vincent Gambino	Abuse: Police Officer Vincent Gambino interfered with § 87(2)(b)'s use of a recording device.	
E.POM Vincent Gambino	Abuse: Police Officer Vincent Gambino searched § 87(2)(b)'s recording device.	
F.POM Sean Collins	Abuse: Police Officer Sean Collins failed to provide § 87(2)(b) with a business card.	
G.POM Francesco Iorio	Abuse: Police Officer Francesco Iorio failed to provide § 87(2)(b) with a business card.	
H.POM Vincent Gambino	Abuse: Police Officer Vincent Gambino failed to provide § 87(2)(b) with a business card.	

Case Summary

On April 3, 2019, § 87(2)(b) filed this complaint with the CCRB over the phone.

On April 1, 2019, at approximately 11:00 p.m., § 87(2)(b) was double parked on Blake Avenue, between Fountain Avenue and Logan Street, in Brooklyn. Shortly after driving away from the location, PO Sean Collins, PO Francesco Iorio, and PO Vincent Gambino, all of the 75th Precinct, pulled § 87(2)(b) over at the intersection of Logan Street and Sutter Avenue. § 87(2)(b) began filming the incident on his cell phone, which was mounted on the dashboard of his vehicle. PO Iorio asked § 87(2)(b) to exit the vehicle and frisked him (**Allegation A: Abuse of Authority, § 87(2)(g)**). PO Gambino asked § 87(2)(b)'s friend, § 87(2)(b) to exit from the passenger seat of the vehicle and frisked him (**Allegation B: Abuse of Authority, § 87(2)(g)**). PO Gambino searched § 87(2)(b)'s vehicle (**Allegation C: Abuse of Authority, § 87(2)(g)**). While searching the vehicle, PO Gambino stopped the recording on § 87(2)(b)'s phone (**Allegations D: Abuse of Authority, § 87(2)(g)**). After stopping the recording, PO Gambino deleted the video from § 87(2)(b)'s phone (**Allegation E: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) requested that PO Collins give him a business card, but he did not provide one (**Allegation F: Abuse of Authority, § 87(2)(g)**). PO Iorio and PO Gambino did not provide business cards to § 87(2)(b) (**Allegations G and H: Abuse of Authority, § 87(2)(g)**). The officers did not issue any summonses or make any arrests.

Body Worn Camera (BWC) footage was received for PO Collins, PO Iorio, and PO Gambino (Board Reviews 01-06).

§ 87(2)(g)

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Francesco Iorio frisked § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Vincent Gambino frisked § 87(2)(b)

It is undisputed that PO Iorio frisked § 87(2)(b) and PO Gambino frisked § 87(2)(b). It is undisputed that no marijuana was recovered from § 87(2)(b)'s vehicle.

§ 87(2)(b) testified (Board Review 07) that there was no odor of marijuana in his vehicle during this incident. § 87(2)(b) denied that he or § 87(2)(b) had smoked marijuana prior to this incident.

§ 87(2)(b) did not respond to contact attempts made to him and was therefore unavailable to provide a statement.

PO Iorio testified (Board Review 08) that he frisked § 87(2)(b) because he detected an odor of marijuana and § 87(2)(b) used an aggressive tone while speaking with officers. PO Iorio noticed an odor of marijuana when he reached § 87(2)(b)'s window, but could not tell if the odor was of burnt or unburnt marijuana. Aside from the odor of marijuana, nothing else caused PO Iorio to believe that there was marijuana in § 87(2)(b)'s vehicle. PO Iorio viewed § 87(2)(b)'s tone as aggressive because § 87(2)(b) was clearly upset that the officers pulled him over. PO Iorio did not think that § 87(2)(b) had a weapon on his person.

PO Gambino testified (Board Review 09) that he frisked § 87(2)(b) for marijuana after detecting a strong odor of burnt marijuana coming from the vehicle. Aside from the odor of marijuana, nothing else made PO Gambino believe that there was marijuana or any other type of contraband inside the vehicle.

PO Collins (Board Review 10) never detected an odor of marijuana during this incident. PO Iorio and PO Gambino never told PO Collins that they detected an odor of marijuana coming from § 87(2)(b)'s vehicle at any point during the incident. PO Collins stood next to PO Iorio on the driver side of § 87(2)(b)'s vehicle when PO Iorio frisked § 87(2)(b).

At approximately 02:23 in PO Gambino's BWC footage, he asks § 87(2)(b) "Do you have any more weed on you?" § 87(2)(b) responds that he does not smoke marijuana and questions why PO Gambino phrased the question in a way that implied he had marijuana on him. PO Gambino responds that he smells marijuana. § 87(2)(b) denies that he smokes marijuana.

PO Collins was standing next to PO Iorio when they approached § 87(2)(b)'s vehicle, when PO Iorio alleged an odor of marijuana was present. However, PO Collins' statement was consistent with § 87(2)(b)'s statement that there was no odor of marijuana. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

The smell of marijuana smoke, with nothing more, can be sufficient to provide police officers with probable cause to search an automobile and its occupants, People v. Chestnut 43 A.D.2d 260 (1974) (Board Review 11).

Officers may frisk the driver or occupants of a vehicle only if he has a reasonable basis for suspecting that the individual is armed and may be dangerous, People v. Smith, 134 A.D.3d (2015) (Board Review 17).

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Vincent Gambino searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO Gambino searched § 87(2)(b)'s vehicle and did not recover any contraband from the search.

PO Gambino testified that he only searched § 87(2)(b)'s vehicle due to the odor of marijuana. PO Gambino did not suspect there was any other contraband inside § 87(2)(b)'s vehicle.

As noted above, the investigation determined PO Gambino's testimony that there was an odor of marijuana was disputed by § 87(2)(b) and PO Collins.

The smell of marijuana smoke, with nothing more, can be sufficient to provide police officers with probable cause to search an automobile and its occupants, People v. Chestnut 43 A.D.2d 260 (1974) (Board Review 11).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (D) Abuse of Authority: Police Officer Vincent Gambino interfered with § 87(2)(b)'s use of a recording device.

§ 87(2)(b) testified that he began recording a video of the incident on his cell phone, which was mounted on the dashboard, before the officers asked him out of the vehicle. When § 87(2)(b) got back into his vehicle after PO Gambino searched it, his phone was sitting on the dashboard, no longer in the mount. § 87(2)(b) checked his phone and the video he had been recording was gone. § 87(2)(b) believed that PO Gambino stopped the video recording while searching the vehicle.

PO Gambino's BWC video corroborated § 87(2)(b)'s testimony. At approximately

00:48 in the video, § 87(2)(b) begins recording on his cell phone mounted on the dashboard. At 01:25, § 87(2)(b) exits the vehicle and his phone is still recording. At 01:50, § 87(2)(b) exits the vehicle. PO Gambino searches the vehicle from approximately 02:55 to 07:07. At 07:07, PO Gambino tells § 87(2)(b) that he can get back in his car, which he does. At 07:17, § 87(2)(b) picks up his phone, no longer mounted and the screen off, from the dashboard. § 87(2)(b) turns on the screen of his phone after picking it up. The video does not capture PO Gambino handling § 87(2)(b)'s cell phone, but is facing downward during most of the vehicle search.

PO Gambino testified that he did not remember seeing § 87(2)(b)'s phone mounted inside the vehicle recording a video. PO Gambino did not remember moving or touching § 87(2)(b)'s phone inside the vehicle. After being presented with his BWC footage of the incident, PO Gambino confirmed that he was the only person inside the vehicle while § 87(2)(b) and § 87(2)(b) were at the back with the other officers. PO Gambino was unable to explain from his personal recollection of the incident, how § 87(2)(b)'s phone changed positions from 02:10 to 07:08 in the video.

PO Gambino was the only person inside § 87(2)(b)'s vehicle while § 87(2)(b), § 87(2)(b), PO Collins, and PO Iorio were standing at the rear. PO Gambino's BWC clearly depicts § 87(2)(b)'s phone recording a video while mounted on the dashboard when § 87(2)(b) and § 87(2)(b) exit the vehicle. When § 87(2)(b) and § 87(2)(b) reenter the vehicle, § 87(2)(b) clearly picks up his phone from the dashboard and it is no longer recording. § 87(2)(g)

Individuals have a right to lawfully observe and/or record police activity including, but not limited to, searches. This right extends to individuals in public places as well as private property in which the individual has a legal right to be present, such as an individual's own property. Officers are not to delete any pictures or recordings from an observer's recording device or order the observer to delete such pictures or recordings, Patrol Guide Procedure 203-09, "When a Member of the Service Encounters an Individual Observing, Photographing, and/or Recording Police Activity" (Board Review 12).

§ 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Vincent Gambino searched § 87(2)(b)'s recording device.

§ 87(2)(b) alleged that PO Gambino deleted the video from his phone after stopping the recording because it was no longer on his phone when he reentered the vehicle. § 87(2)(b) could not provide the recording to the CCRB because it had been deleted from his phone.

PO Gambino denied that he deleted any video from § 87(2)(b)'s phone.

No one testified that they observed PO Gambino going through the contents of § 87(2)(b)'s phone, or deleting the video.

There was no video of PO Gambino going through the contents of § 87(2)(b)'s phone or deleting the video.

§ 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Sean Collins failed to provide § 87(2)(b) with a business card.

Allegation (G) Abuse of Authority: Police Officer Francesco Iorio failed to provide § 87(2)(b) with a business card

Allegation (H) Abuse of Authority: Police Officer Vincent Gambino failed to provide § 87(2)(b) with a business card

It is undisputed that PO Collins, PO Iorio, and PO Gambino did not provide § 87(2)(b) with business cards.

At 08:12 in PO Collins BWC, § 87(2)(b) asks for PO Collins' information and gestures with his index finger and thumb in the shape of a card. PO Collins provides his information verbally and asks if § 87(2)(b) wants to write it down. No officer gives § 87(2)(b) a business card. PO Iorio and PO Gambino do not provide their names or shield numbers in any way.

§ 87(2)(b) testified that he asked PO Collins for a business card, but PO Collins told him to write down his information. PO Collins verbally provided his information.

PO Collins testified that he verbally provided § 87(2)(b) with his name and shield number, and then § 87(2)(b) asked for a business card. PO Collins did not provide § 87(2)(b) with a business card because he did not have any. PO Collins never received any business cards.

PO Iorio did not provide or offer a business card to § 87(2)(b). PO Iorio had business cards with him during the incident. PO Iorio stated that he verbally provided his name and shield number to § 87(2)(b).

PO Gambino did not provide or offer a business card to § 87(2)(b). PO Gambino did not have business cards with him during the incident.

During a law enforcement activity, including frisks and vehicle searches, officers shall offer a business card to such person at the conclusion of any such activity that does not result in an arrest or summons. An officer must offer a business card to any person requesting identifying information, NYC Administrative Code, Section 14-174, "Identification of Police Officers" (Board Review 14).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- Mr § 87(2)(b) has been party to four CCRB complaints and has been named a victim in 17 allegations (Board Review 15).
 - § 87(2)(b)
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- PO Collins has been a member of the service for six years and has been a subject in 10 CCRB complaints and 16 allegations, of which four were substantiated.

- CCRB case 201804716 involved substantiated allegations of a question, frisk, search of person, and vehicle search. The Board recommended formalized training and the NYPD has not yet imposed discipline.
- PO Iorio has been a member of the service for five years and has been a subject in three CCRB complaints and four allegations, of which none have been substantiated to date.
- PO Gambino has been a member of the service for six years and has been a subject in five CCRB complaints and 20 allegations of which none have been substantiated to date.
 - § 87(2)(b) 201804716 § 87(2)(b), § 87(2)(g) involved frisk allegations against PO Gambino. The allegation in 201804716 was unfounded. § 87(2)(b), § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- A FOIL request to the office of the NYC Comptroller was pending as of December 2, 2019. Any response will be added to the case file upon receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Squad No.: _____

Investigator:	_____ Signature	_____ Print Title & Name	_____ Date
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Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
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Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
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